



COMMUNICATIONS, INC.

July 21, 1999

Ms. Arpana Kagal, Account Manager
Southwestern Bell
Four Bell Plaza, 8th Floor
311 South Ackard
Dallas, TX 75202

Dear Arpana:

We have reviewed SWBT's proposed substitute for the collocation appendix to our Missouri Interconnection Agreement. While the proposed document does make an effort to incorporate the provisions of new FCC rules, it also makes substantial changes to the rest of the appendix that we do not believe is appropriate.

Given that SWBT must comply with the FCC rules, as emphasized in section 11.1 of the current appendix, we do not believe it is necessary for our company to devote substantial resources to negotiating a substitute appendix merely to incorporate the text of the rules. Instead, we have prepared an annotated version of the current appendix that connects the contract language to the applicable rules. We will work from this version to assure that we receive the full benefit of the rules. To that end, we are providing you with a copy of the annotated version so that both companies can work from the same document.

Please make this annotated version available to the appropriate personnel so that we can avoid unnecessary disputes over compliance with the FCC's rules.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan L. Butler", is written over a horizontal line.

Susan L. Butler
Vice President

Attachment: Annotated Version, Appendix Collocation – Missouri (39 Pages)

Cc (without attachment): Carl Lumley
Cully Dale

APPENDIX COLLOCATION

This Appendix Collocation to Attachment 13: Ancillary Functions, sets forth terms and conditions applicable to the Parties' rights and obligations pertaining to physical collocation.

1.0 Introduction

- 1.1 SWBT is an incumbent local exchange carrier having a statutory duty to provide for "physical collocation" of "equipment necessary for interconnection or access to unbundled network elements" at its Eligible Structures. 47 U.S.C. 251(c)(6). **NOTE 1.1 (Next Page)**
- 1.2 BCI wishes to locate certain of its equipment within the Eligible Structures of SWBT (as defined herein) and thereby connect with SWBT and with other Local Service Providers (as specified in Section 10.6 below).
- 1.3 This Appendix will govern BCI's collocation of its equipment within SWBT's Eligible Structures, subject also to the provisions of the Agreement to which this Appendix is included.

2.0 Allocation of Collocated Space within Eligible Structures

- 2.1 "Eligible Structures," as used herein, include all SWBT central offices, tandem offices and serving wire centers and all buildings and similar structures owned or leased by SWBT that house SWBT network facilities and, all structures that house SWBT facilities on public or private rights-of-way, controlled environmental vaults (CEVs), huts, and cabinets.
- 2.2 Space within an Eligible Structure containing any BCI collocated equipment is referred to herein as "Collocated Space."
- 2.3 Subject to this Appendix, SWBT grants to BCI access to and use of Collocated Space within its Eligible Structures.
- 2.4 SWBT may retain a limited amount of floor space for defined future uses within its eligible structures. SWBT will allocate other space within its Eligible Structures on a nondiscriminatory, "first-come, first-served" basis among itself, BCI, and other collocators, provided that there is space and power available for collocation and for reasonable security arrangements and subject to any other limitations provided by law. **NOTE 2.4 (Next Page)**
- 2.5 The determination whether there is insufficient space to accommodate physical collocation at a particular Eligible Structure will be made initially by SWBT. If BCI disputes SWBT's determination, BCI can elect a review to be made by a third-party engineer, under a nondisclosure agreement. Both parties will agree upon the selection of an engineer the cost of which would be shared equally by both parties. The engineer selected will take into consideration SWBT's specific requirements of the eligible structure under review. **NOTE 2.5 (Next Page)**

NOTE 1.1 - SWBT must comply with FCC Rules 51.321 and 51.323 as amended 3/31/99. See Appendix Collocation Section 11.1. This appendix has been annotated to these rules for convenience. However, annotation of a rule to a specific section of this appendix is not intended to limit the scope of applicability of the rule. In the event of a conflict between the contract language and the rules, the rules are controlling.

NOTE 2.4 51.321(h)

Upon request, an incumbent LEC must submit to the requesting carrier within ten days of the submission of the request a report indicating the incumbent LEC's available collocation space in a particular LEC premises. This report must specify the amount of collocation space available at each requested premises, the number of collocators, and any modifications in the use of the space since the last report. This report must also include measures that the incumbent LEC is taking to make additional space available for collocation. The incumbent LEC must maintain a publicly available document, posted for viewing on the incumbent LEC's publicly available Internet site, indicating all premises that are full, and must update such a document within ten days of the date at which a premises runs out of physical collocation space.

51.321(i)

An incumbent LEC must, upon request, remove obsolete unused equipment from their premises to increase the amount of space available for collocation.

51.323(f)

An incumbent LEC shall allocate space for the collocation of the equipment identified in paragraph (b) of this section [See Appendix Collocation Section 9.2] in accordance with the following requirements:

- (1) an incumbent LEC shall make space available within or on its premises to requesting telecommunications carriers on a first-come, first-served basis, provided, however, that the incumbent LEC shall not be required to lease or construct additional space to provide for physical collocation when existing space has been exhausted;

- (2) to the extent possible, an incumbent LEC shall make contiguous space available to requesting telecommunications carriers that seek to expand their existing collocation space;
- (3) when planning renovations of existing facilities or constructing or leasing new facilities, an incumbent LEC shall take into account projected demand of collocation of equipment;
- (4) an incumbent LEC may retain a limited amount of floor space for its own specific future uses, provided, however, that the incumbent LEC may not reserve space for future use on terms more favorable than those that apply to other telecommunications carriers seeking to reserve collocation space for their own future use;
- (5) an incumbent LEC shall relinquish any space held for future use before denying a request for virtual collocation on the grounds of space limitations, unless the incumbent LEC proves to the state commission that virtual collocation at that point is not technically feasible; and
- (6) an incumbent LEC may impose reasonable restrictions on the warehousing of unused space by collocating telecommunications carriers, provided, however, that the incumbent LEC shall not set maximum space limitations applicable to such carriers unless the incumbent LEC proves to the state commission that space constraints make such restrictions necessary.

NOTE 2.5 51.321 (f)

An incumbent LEC shall submit to the state commission, subject to any protective order as the state commission may deem necessary, detailed floor plans or diagrams of any premises where the incumbent LEC claims that physical collocation is not practical because of space limitations. An incumbent LEC that contends space for physical collocation is not available in an incumbent LEC premises must also allow the requesting carrier to tour the entire premises in question, not just the area in which space was denied, without charge, within ten days of the receipt of the incumbent LEC's denial of space.

51.323(k)(3)

Adjacent space collocation. An incumbent LEC must make available, where space is legitimately exhausted in a particular incumbent LEC premises, collocation in adjacent controlled environmental vaults or similar structures to the extent technically feasible. The incumbent LEC

must permit the new entrant to construct or otherwise procure such an adjacent structure, subject only to reasonable safety and maintenance requirements. The incumbent must provide power and physical collocation services and facilities, subject to the same nondiscrimination requirements as applicable to any other physical collocation arrangement. The incumbent LEC must permit the requesting carrier to place its own equipment, including, but not limited to, copper cables, coaxial cables, fiber cables, and telecommunications equipment, in adjacent facilities constructed by either the incumbent LEC or by the requesting carrier itself.

- 2.6 Subject to Sections 2.4 and 2.5 above, SWBT will make contiguous space available in response to an BCI request to expand existing Collocated Space.
- 2.7 SWBT will provide BCI with virtual collocation rather than physical collocation under the following circumstances: **NOTE 2.7 (Next Page)**
- 2.7.1 When sufficient space is not available for physical collocation at a particular Eligible Structure as determined under Section 2.5, SWBT will not deny virtual collocation for a particular Eligible Structure to BCI, unless virtual collocation is not technically feasible.
- 2.7.2 Upon request from BCI, so long as technically feasible and space is available, SWBT will provide BCI with virtual collocation pursuant to applicable tariffs.

3.0 Application for Collocated Space.

- 3.1 To apply for a particular Collocated Space within SWBT's Eligible Structures, BCI will provide to SWBT a completed "Physical Collocation Application Form" (Rev. 11/19/96 or as subsequently modified) and will pay to SWBT an "Engineering Design Charge" ("EDC"). The Physical Collocation Application Form will contain a list of all forecasted equipment and facilities to be placed within the Collocated Space, with the associated power requirements, floor loading, and heat release of all pieces of forecasted equipment and facilities, as specified further in Section 10.2 below. The Engineering Design Charge will be specified in SWBT's current technical publication for physical collocation. **NOTE 3.1 (Next Page)**
- 3.2 Upon receipt of BCI's application for Collocated Space, SWBT will begin to prepare a price quotation for the Collocated Space. SWBT will provide BCI with the price quotation within thirty-five (35) business days of receipt of BCI's Physical Collocation Application Form and Engineering Design Charge. When sufficient space is not available for physical collocation at a particular Eligible Structure as determined under Section 2.5, SWBT will refund the unused portion of the Engineering Design Charge to BCI within thirty-five (35) business days of that determination.
- 3.3 SWBT's price quotation will consist of a "Preparation Charge," "Monthly Charge," and "Completion Interval."
- 3.3.1 The Preparation Charge will represent a one-time charge for SWBT's preparation of the Collocated Space and related modifications to the Eligible Structure. The Preparation Charge will consist of two Components: (i) the charge to BCI associated with modifying the Eligible Structure to provide physical collocation ("Common Charge"), as set forth in Section 4.3.1, and (ii) the charge associated with preparing the Collocated Space ("Collocated Space Charge"). SWBT will quote the portion of the Preparation Charge that consists of charges for subcontracted work ("Subcontractor Charges"). **NOTE 3.3.1 (Next Page)**

NOTE 2.7 51.321(e)

An incumbent LEC shall not be required to provide for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the incumbent LEC's premises if it demonstrates to the state commission that physical collocation is not practical for technical reasons or because of space limitations. In such cases, the incumbent LEC shall be required to provide virtual collocation, except at points where the incumbent LEC proves to the state commission that virtual collocation is not technically feasible. If virtual collocation is not technically feasible, the incumbent LEC shall provide other methods of interconnection and access to unbundled network elements to the extent technically feasible.

51.323(e) (SEE APPENDIX COLLOCATION SECTION 9.2)

When providing virtual collocation, an incumbent LEC shall, at a minimum, install, maintain, and repair collocated equipment identified in paragraph (b) of this section within the same time periods and with failure rates that are no greater than those that apply to the performance of similar functions for comparable equipment of the incumbent LEC itself.

NOTE 3.1 51.321 (a), (b), (c), and (d)

- (a) Except as provided in paragraph (e) of this section [See Appendix Collocation Section 2.7], an incumbent LEC shall provide, on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the requirements of this part, any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular point upon a request by a telecommunications carrier.
- (b) Technically feasible methods of obtaining interconnection or access to unbundled network elements include, but are not limited to:
 - (1) physical collocation and virtual collocation at the premises of an incumbent LEC; and
 - (2) meet point interconnection arrangements.
- (c) A previously successful method of obtaining interconnection or access to unbundled network elements at a particular premises or point on any incumbent LEC's network is substantial evidence that such method is technically feasible in the case of substantially

similar network premises or points. A requesting telecommunications carrier seeking a particular collocation arrangement, either physical or virtual, is entitled to a presumption that such arrangement is technically feasible if any LEC has deployed such collocation arrangement in any incumbent LEC premises.

- (d) An incumbent LEC that denies a request for a particular method of obtaining interconnection or access to unbundled network elements on the incumbent LEC's network must prove to the state commission that the requested method of obtaining interconnection or access to unbundled network elements at that point is not technically feasible.

51.323(a)

An incumbent LEC shall provide physical collocation and virtual collocation to requesting telecommunication carriers.

51.323(k)

An incumbent LEC's physical collocation offering must include the following:

- (1) Shared collocation cages. A shared collocation cage is a caged collocation space shared by two or more competitive LECs pursuant to terms and conditions agreed to by the competitive LECs. In making shared cage arrangements available, an incumbent LEC may not increase the cost of site preparation or nonrecurring charges above the cost for provisioning such a cage of similar dimensions and material to a single collocating party. In addition, the incumbent must prorate the charge for site conditioning and preparation undertaken by the incumbent to construct the shared collocation cage or condition the space for collocation use, regardless of how many carriers actually collocate in that cage, by determining the total charge for site preparation and allocating that charge to a collocating carrier based on the percentage of the total space utilized by that carrier. An incumbent LEC must make shared collocation space available in single-bay increments or their equivalent, *i.e.*, a competing carrier can purchase space in increments small enough to collocate a single rack, or bay, of equipment.
- (2) Cageless collocation. Incumbent LECs must allow competitors to collocate in any unused space in the incumbent LEC's premises,

without requiring the construction of a cage or similar structure, and without requiring the creation of a separate entrance to the competitor's collocation space. An incumbent LEC may require collocating carriers to use a central entrance to the incumbent's building, but may require construction of a new entrance for competitors' use, and once inside the building, incumbent LECs must permit collocating carriers to have direct access to their equipment. An incumbent LEC may not require competitors to use an intermediate interconnection arrangement in lieu of direct connection to the incumbent's network if technically feasible. In addition, an incumbent LEC must give competitors the option of collocating equipment in any unused space within the incumbent's premises, and may not require competitors to collocate in a room or isolated space separate from the incumbent's own equipment. An incumbent LEC must make cageless collocation space available in single-bay increments, meaning that a competing carrier can purchase space in increments small enough to collocate a single rack, or bay, of equipment.

- (3) Adjacent space collocation. An incumbent LEC must make available, where space is legitimately exhausted in a particular incumbent LEC premises, collocation in adjacent controlled environmental vaults or similar structures to the extent technically feasible. The incumbent LEC must permit the new entrant to construct or otherwise procure such an adjacent structure, subject only to reasonable safety and maintenance requirements. The incumbent must provide power and physical collocation services and facilities, subject to the same nondiscrimination requirements as applicable to any other physical collocation arrangement. The incumbent LEC must permit the requesting carrier to place its own equipment, in adjacent facilities constructed by either the incumbent LEC or by the requesting carrier itself.

NOTE 3.3.1 51.323(k)(1)

Shared collocation cages. A shared collocation cage is a caged collocation space shared by two or more competitive LECs pursuant to terms and conditions agreed to by the competitive LECs. In making shared cage arrangements available, an incumbent LEC may not increase the cost of site preparation or nonrecurring charges above the cost for provisioning such a cage of similar dimensions and material to a single collocating party. In addition, the incumbent must prorate the charge for site conditioning and preparation undertaken by the incumbent to construct the shared collocation cage or condition the space for collocation use,

regardless of how many carriers actually collocate in that cage, by determining the total charge for site preparation and allocating that charge to a collocating carrier based on the percentage of the total space utilized by that carrier. An incumbent LEC must make shared collocation space available in single-bay increments or their equivalent, *i.e.*, a competing carrier can purchase space in increments small enough to collocate a single rack, or bay, of equipment.

- 3.3.2 The Monthly Charge will consist of, the monthly charges for floor space, power usage, maintenance, administration, and taxes for equipment charged by SWBT to BCI for use of the Collocated Space. Additional monthly charges may be added to this list upon approval of the state commission at the time the ICB is submitted for approval.
- 3.3.3 The Completion Interval will consist of SWBT's estimate of the amount of time required for it to prepare the Collocated Space to comply with BCI's collocation application.
- 3.4 SWBT's price quotation will be calculated using an actual cost methodology for nonrecurring charges and a Missouri PSC approved forward-looking costing methodology for recurring charges. SWBT's price quotation will be sufficient to cover SWBT's reasonable costs and will be no greater than necessary for SWBT to earn a reasonable profit. BCI will have 65 calendar days to accept or reject the price quotation. Upon acceptance, BCI may ask the State Commission to review any of SWBT's charges for conformity with the above standards. However, BCI remains committed to occupy the space regardless of the Commission's decision concerning pricing.
- 3.5 Prior to any obligation for BCI to accept or reject SWBT's price quotation, SWBT will permit BCI to inspect the Collocated Space to determine its suitability for BCI's intended uses. Such inspection shall be made with a SWBT employee escort, the cost of which will be billed to BCI at SWBT's then current loaded labor rate for a first level management employee. Subject to an appropriate non-disclosure agreement, SWBT will permit BCI to review the construction plans as they exist at that time and to inspect supporting documents for the Preparation Charge, including the Common Charge (if BCI is the first entity to which SWBT provides physical collocation in an Eligible Structure), the Collocated Space Charge, and any Custom Work charge. During this review, BCI may request changes to the plans for the Collocated Space and to the extent possible, SWBT will incorporate the changes into the construction plans and the associated charges.
- 3.6 SWBT's price quotation will constitute a firm offer that BCI may accept in writing within sixty-five (65) days of BCI's receipt of the price quotation, subject only to the true-up procedure specified in Section 5.8 below. SWBT will not reserve the Collocated Space for BCI during this sixty-five day period. If BCI does not accept the price quotation in writing within sixty-five (65) days of BCI's receipt of the price quotation, the price quotation will be automatically rescinded. Within thirty business days following acceptance, payment will be made pursuant to paragraphs 4.2 and 4.3. Failure to make such payment will be deemed a withdrawal of BCI's acceptance.

3.7 BCI may better SWBT's quoted Collocated Space Charge or quoted Completion Interval for the collocated space by subcontracting the preparation of the Collocated Space with contractors approved by SWBT. SWBT's approval of contractors will be based on the same criteria that it uses in approving contractors for its own purposes, which approval will not be unreasonably withheld. BCI will be responsible for the cost of its own contractors; SWBT will adjust the Preparation Charge to account for BCI's provision of its own contractors. **NOTE 3.7 (Next Page)**

3.8 If BCI accepts SWBT's price quotation for a particular Collocated Space, the Parties will submit for regulatory approval whatever documentation is required by the State Commission for the State Commission's approval of the Parties' collocation arrangement. The Parties will cooperate to file the necessary documentation as soon as practicable. If the Commission fails to give unqualified approval to the Parties' collocation arrangement, then SWBT's price quotation, and BCI's acceptance thereof, will be automatically rescinded unless otherwise agreed to by SWBT and BCI.

4.0 Preparation of the Collocated Space.

4.1 SWBT agrees, at BCI's sole cost and expense as set forth herein, to prepare the Collocated Space in accordance with working drawings and specifications prepared by SWBT. The preparation will be arranged by SWBT in compliance with all applicable codes, ordinances, resolutions, regulations and laws. Only after BCI has made the initial payments required by Sections 4.2 and 4.3 and regulatory approval is obtained in accordance with Section 3.8 hereof (unless BCI chooses to invoke the procedure specified in Section 4.4 below), SWBT will pursue diligently the preparation of the Collocated Space for use by BCI.

4.2 Prior to any obligation on SWBT to start any preparation of the Collocated Space, BCI will pay SWBT fifty percent (50%) of the Collocated Space Charge and eighty-five percent (85%) of any custom work charge required to create or vacate any entrance facility for BCI ("Custom Work"). The remainder of the Collocated Space Charge and any Custom Work charge are due upon completion and prior to occupancy by BCI.

4.3 In addition and prior to any obligation on SWBT to start any preparation of the Eligible Structure for physical collocation, BCI will pay SWBT fifty percent (50%) of the Common Charge, as described in Section 4.3.1 below. The other fifty percent (50%) of the Common Charge is due upon completion and prior to occupancy by BCI. **NOTE 4.3 (Next Page)**

4.3.1 The first entity to which SWBT provides physical collocation in an Eligible Structure will be responsible for all costs incurred by SWBT associated with the preparation of that Eligible Structure to provide physical collocation in the initial space where physical collocation is to be located ("Initial Common Charge"). The next three subsequent collocators that share such common elements as, but not limited to, HVAC systems, electrical power panels, conduits, and security systems, at the same Eligible Structure will pay a "Common Charge" equal to the Initial Common Charge multiplied by a fraction, the numerator of which is one and the

NOTE 3.7 51.323(j)

An incumbent LEC shall permit a collocating telecommunications carrier to subcontract the construction of physical collocation arrangements with contractors approved by the incumbent LEC, provided, however, that the incumbent LEC shall not unreasonably withhold approval of contractors. Approval by any incumbent LEC shall be based on the same criteria it uses in approving contractors for its own purposes.

NOTE 4.3 51.323(k)(1)

Shared collocation cages. A shared collocation cage is a caged collocation space shared by two or more competitive LECs pursuant to terms and conditions agreed to by the competitive LECs. In making shared cage arrangements available, an incumbent LEC may not increase the cost of site preparation or nonrecurring charges above the cost for provisioning such a cage of similar dimensions and material to a single collocating party. In addition, the incumbent must prorate the charge for site conditioning and preparation undertaken by the incumbent to construct the shared collocation cage or condition the space for collocation use, regardless of how many carriers actually collocate in that cage, by determining the total charge for site preparation and allocating that charge to a collocating carrier based on the percentage of the total space utilized by that carrier. An incumbent LEC must make shared collocation space available in single-bay increments or their equivalent, *i.e.*, a competing carrier can purchase space in increments small enough to collocate a single rack, or bay, of equipment.

denominator of which is the total number of collocators in the same Eligible Structure. Each time additional collocator(s) use(s) physical collocation in the same Eligible Structure, within thirty-six (36) months of the first billing date of the initial monthly charge for the physical collocator in that Eligible Structure, each previous collocator will receive a prorated refund of its previously paid Initial Common Charge or Common Charge. The prorated refund to each previous collocator will consist of the Common Charge paid by the most recent collocator (the one who, in a particular instance, will not receive a refund) divided by the total number of previous collocators, using the following schedule:

<u>Collocator(s)</u>	<u>Common Charge</u>	<u>Prorated Refund to Previous Collocator(s)</u>
1 st	100%	N/A
2 nd	50%	50%
3 rd	33 1/3%	16 2/3%
4 th	25%	8 1/3%
5 th and beyond	0%	0%

No interest will be paid on refunds. Refunds shall be based on the Initial Common Charge actually paid by the first physical collocator instead of the price quotation.

- 4.3.2 Notwithstanding the above, SWBT will have no obligation to remit any amount that would result in SWBT being unable to retain the full amount of the Initial Common Charge or to remit any amount based upon charges not actually collected.
- 4.4 At the written election of BCI, and upon payment of the sums described above in Sections 4.2 and 4.3, SWBT will begin preparing the Collocated Space for BCI prior to receiving the regulatory approval required by Section 3.8 above. Payment to SWBT of the remaining charges under these sections shall be due upon completion. If the Commission fails to give unqualified approval to the Parties' collocation arrangement as required by Section 3.8, and the Parties do not otherwise agree to continue the collocation arrangement for the Collocated Space, BCI will pay to SWBT, within a reasonable time after the Commission's decision, an amount equal to SWBT's Non-recoverable costs less net salvage and less the amount already paid to SWBT. Non-recoverable charges include, the non-recoverable cost of equipment and material ordered, provided, or used; trued-up Subcontractor Charges, the non-recoverable cost of installation and removal, including the costs of equipment and material ordered, provided, or used; labor, transportation and any associated costs. If the amounts already paid to SWBT plus the net salvage exceed SWBT's non-recoverable costs, SWBT will refund to BCI the excess amount within a reasonable time after the Commission's decision.

- 4.5 SWBT will provide costs for the preparation of the collocated space. SWBT will allow BCI to evaluate those costs and make a decision as to whether BCI wishes to obtain their own contractor for the preparation of the collocated space.
- 4.6 SWBT will contract for or perform the preparation of the working drawings and specifications for the modification of the Eligible Structure and the preparation of the Collocated Space. Prior to SWBT commencing any construction or preparation activities on the collocated space, SWBT will provide copies of the working drawings and specifications to BCI, and BCI must approve these working drawings and specifications within seven days of receipt. Upon BCI's request, SWBT will modify the working drawings and specifications in accord with BCI's requested alterations. SWBT will provide copies of the modified working drawings and specifications to BCI and BCI must approve these modified working drawings and specifications within seven days of receipt. The Completion Interval will be abated between SWBT's provision of the working drawings and specifications to BCI and BCI's approval of those working drawings and specifications.
- 4.7 BCI may better SWBT's bids by subcontracting the preparation of the Collocated Space with contractors approved by SWBT. SWBT's approval of contractors will be based on the same criteria that it uses in approving contractors for its own purposes, which approval will not be unreasonably withheld. BCI will be responsible for the cost of its own contractors; SWBT will adjust the Preparation Charge to account for BCI's provision of its own contractors.
- NOTE 4.7 (Next Page)
- 4.8 Except for construction and preparation activities performed by BCI's own contractors, SWBT or SWBT's subcontractors will perform the construction and preparation activities underlying the Preparation Charge, including the Common Charge, the Collocated Space Charge, and the Subcontractor Charges, and any Custom Work charges, using same or consistent practices that are used by SWBT for other construction and preparation work performed in the Eligible Structure.
- 4.9 SWBT will provide to BCI ordinary construction documentation submitted to and received from contractors or its internal engineering or installation work force, including but not limited to as-built drawings, for any work related to construction of the Collocated Space.
- 4.10 SWBT will permit BCI to inspect the ongoing preparation of the Collocated Space at regular intervals. At a minimum, SWBT will permit BCI to inspect the Collocated Space when construction is approximately 25% completed, when construction is approximately 50% completed, and when construction is approximately 75% completed. During such inspections, BCI shall be escorted by a SWBT employee to be charged to BCI at the loaded labor rate of a first line management employee. Should BCI's inspections reveal that SWBT or

NOTE 4.7 51.323(j)

An incumbent LEC shall permit a collocating telecommunications carrier to subcontract the construction of physical collocation arrangements with contractors approved by the incumbent LEC, provided, however, that the incumbent LEC shall not unreasonably withhold approval of contractors. Approval by any incumbent LEC shall be based on the same criteria it uses in approving contractors for its own purposes.

SWBT's subcontractors have deviated from the approved working drawings and specifications in the construction of the Collocated Space, SWBT will correct those deviations as soon as reasonably practicable.

- 4.11 SWBT will notify BCI when construction of the Collocated Space is 50% completed. SWBT will confirm its Completion Interval, if possible; otherwise SWBT will notify BCI of all jeopardies that could delay the preparation of the Collocated Space .
- 4.12 SWBT will exercise due diligence to prepare the Collocated Space in a reasonable time period, not to exceed three months from BCI's acceptance of SWBT's price quotation, unless otherwise mutually agreed to in writing by BCI and SWBT. In the event that SWBT is not able to prepare the Collocated Space within the quoted Completion Interval, SWBT will provide BCI with a revised Completion Interval within seven (7) working days after SWBT ascertains that the original Completion Interval cannot be met. If the revised Completion Interval is objectionable to BCI, and the parties cannot resolve BCI's objection, the issue may be presented to the State Commission for review. Alternatively, if the revised Completion Interval is objectionable to BCI, BCI may individually subcontract the further preparation of the Collocated Space with contractors approved by SWBT. SWBT's approval of contractors will be based on the same criteria that it uses in approving contractors for its own purposes, which approval will not be unreasonably withheld. BCI will be responsible for the cost of its own contractors; SWBT will, however, reduce the Preparation Charge by BCI's cost of providing its own contractors.
- 4.13 If SWBT is not able to prepare the Collocated Space within the quoted Completion Interval, SWBT will be liable to BCI for liquidated damages in the amount of \$1,000.00 for each day between the expiration of the quoted Completion Interval and the completion of the Collocated Space. This provision is subject to the Force Majeure clause in Paragraph 13 of the General Terms and Conditions of this Agreement.
- 4.14 SWBT will notify BCI within five (5) days after preparation is complete that preparation of the Collocated Space has been completed.
- 5.0 **Occupancy of the Collocated Space**
- 5.1 The "Commencement Date" for a particular Collocated Space shall be the first day after which BCI has been notified that the Collocated Space is complete.
- 5.2 On or after the Commencement Date, BCI will be permitted to access the Collocated Space and Eligible Structure for the limited purpose of inspecting the collocation space. At BCI's request and at SWBT's expense, SWBT will correct all errors in SWBT's preparation of the Collocated Space as soon as reasonably practicable. After BCI has approved both SWBT's

preparation of the Collocated Space, and paid all applicable charges in accordance with paragraph 4.3, BCI may occupy the Collocated Space.

- 5.3 SWBT will provide a drawing that details the layout of a POTS frame provided by SWBT, if any, at the time of completion of the collocated space.
- 5.4 SWBT will provide BCI, at the time of the price quotation, sufficient detailed information that will enable BCI to determine the amount of cable required to reach from the SWBT designated manhole to BCI's collocated space within the Eligible Structure.
- 5.5 Unless there are unusual circumstances, BCI must place telecommunications equipment in the Collocated Space within sixty (60) days after BCI is permitted to occupy the Collocated Space under Sections 5.1 and 5.2 above, provided, however, that this sixty (60) day period will not begin until the ICB is approved by the Commission. If BCI fails to comply with this requirement, SWBT may offer the Collocated Space to another collocater provided, however, that SWBT may extend an additional ninety (90) days to BCI upon a demonstration by BCI that it exercised its best effort to comply with this requirement and that circumstances beyond BCI's reasonable control that prevented BCI from complying with this requirement.
- 5.6 Beginning on the first date of occupancy of the Collocated Space, BCI will pay the Monthly Charge to SWBT for each month that BCI occupies the Collocated Space. The Monthly Charge may be increased upon thirty (30) days' notice by SWBT.
- 5.7 In the event that BCI cancels a request for Collocated Space or fails to occupy a Collocated Space in the time provided under Section 5.5 above, then in addition to any other remedies that SWBT might have, BCI will owe to SWBT its reasonable non-recoverable costs less estimated net salvage and less the amounts already paid to SWBT. Non-recoverable costs include the non-recoverable cost of equipment and material ordered, provided or used; trued-up Subcontractor Charges, the non-recoverable cost of installation and removal, including the costs of equipment and material ordered, provided or used; labor; transportation and any other associated costs. If the amounts already paid to SWBT plus the estimated net salvage exceed SWBT's reasonable nonrecoverable costs, SWBT will refund to BCI the excess amount within thirty (30) days of the cancellation of the request. SWBT will provide to BCI's third party accounting firm under a nondisclosure agreement a detailed invoice itemizing its non-recoverable costs.
- 5.8 Within one hundred twenty (120) days of the completion date of the Collocated Space, SWBT will perform a true-up of all Subcontractor Charges using the actual amounts billed by subcontractors. Any amounts incurred above the Subcontractor Charges will be billed to BCI or, alternatively, any amount below such Charges will be remitted to BCI.

6.0 Billing and Payment of Collocation Charges.

- 6.1 Billing shall occur on or about the 25th day of each month with payment due thirty (30) days from the bill date. Payment of a bill does not waive BCI's right to dispute the charges contained therein.
- 6.2 Charges for interconnection shall be as set forth in any interconnection agreement between SWBT and BCI and in any applicable tariffs.

7.0 Relocation of Collocated Space

- 7.1 Notwithstanding Section 2.3 above, in the event that SWBT determines it necessary for the Collocated Space to be moved within an Eligible Structure or to another Eligible Structure, BCI is required to do so. In such an event, BCI shall be responsible for the preparation of the new Collocated Space at the new location if such relocation arises from circumstances beyond the reasonable control of SWBT, including condemnation or government order or regulation that makes the continued occupancy of the Eligible Structure uneconomical or when an unsafe or hazardous condition makes abandonment of a central office necessary. Otherwise SWBT shall be responsible for any such preparation and will bear all SWBT and BCI costs associated with the preparation and relocation. If Collocated Space is relocated under this Section 7.1, SWBT and BCI will cooperate to insure that BCI will not experience out of service conditions beyond reasonable cut-over intervals while collocated equipment is relocated, reconnected, and tested. SWBT will not be required to maintain a building strictly for the purposes of providing collocation.
- 7.2 In the event that BCI requests that the Collocated Space be moved within an Eligible Structure or to another Eligible Structure, SWBT shall permit BCI to relocate the Collocated Space, subject to the availability of space. BCI shall be responsible for all applicable charges associated with the move, including the reinstallation of its equipment and facilities and the preparation of the new Collocated Space and the new Eligible Structure as applicable.

8.0 Fiber Optic Cable and Demarcation Point.

- 8.1 BCI may use single mode dielectric fiber optic cable as a transmission medium, or other technically-appropriate media as may be approved by SWBT. Said approval shall not be unreasonably withheld. BCI may use copper cable or coaxial cable only where BCI can demonstrate that interconnection of copper or coaxial cable will not impair SWBT's ability to serve its own customers or other collocators. BCI may use microwave transmission facilities as a transmission medium to the Eligible Structure where Collocated Space is located, except where microwave transmission facilities are not practical for technical reasons or because of space limitations. SWBT will provide at least two separate points of entry to the Eligible Structure wherever there are at least two entry points for SWBT's cable facilities and at which space is available for new facilities in at least two of those entry points. Where such space is

not immediately available, if SWBT makes additional entry points available for SWBT's use, SWBT will size such separate points of entry to accommodate BCI's use of such entry points. In each instance, where SWBT performs such work in order to accommodate its own needs and those specified by BCI's written request, BCI and SWBT will share the costs of sizing the entry points incurred by SWBT by prorating those costs using the number of cables to be placed in the entry point by each of the two parties in the first twelve (12) months thereafter.

NOTE 8.1 (Next Page)

- 8.2 BCI and SWBT agree that the demarcation point between SWBT's network and BCI's network for interconnection and access to unbundled network elements will be within BCI's Collocated Space (e.g., point-of-termination frame) unless determined otherwise by BCI and SWBT. Both BCI and SWBT are responsible for equipment maintenance and other ownership obligations and responsibilities on their side of that demarcation point.

9.0 Technical Requirements

- 9.1 Other than reasonable security restrictions, SWBT will place no restriction on access to the BCI Collocated Space by BCI's employees and designated agents. Such space will be available to BCI employees and designated agents twenty-four (24) hours per day each day of the week.

NOTE 9.1 (Next Page)

- 9.2 Subject to the other provisions hereof, BCI may collocate the amount and type of telecommunications equipment necessary in its Collocated Space for access to SWBT's unbundled network elements and for interconnection to SWBT and, subject to Section 10.6 hereof, other collocators. All BCI equipment placed in the Collocated Space will conform to the equipment standards set forth in this Agreement and be operated in a manner not inconsistent with SWBT's network. Except as provided herein or as otherwise agreed in writing by the Parties, BCI shall only collocate and use equipment as allowed by applicable law. Where space permits and for the purposes set forth in this Section 9.3, SWBT shall allow BCI to locate remote switching module equipment in the Collocated Space if the Collocated Space is within a SWBT central office or tandem office; provided, however, that SWBT shall have no requirement to provide remote switching module equipment on a virtual collocation basis. No power-generating or external power-storage equipment, but in no event lead acid batteries, shall be placed in the Collocated Space. The point of termination (POT) bay will be located inside the caged area, equipped and cabled as requested by BCI to minimize cable additions on an ongoing basis.

NOTE 9.2 (Next Page)

- 9.3 Subject to the other provisions hereof, including Section 11.1, BCI may select its own vendors for all required engineering and installation services associated with its collocated equipment. SWBT will not require BCI to use SWBT's internal engineering or installation work forces for the engineering and installation of BCI's collocated equipment.

NOTE 8.1 51.323(d)

When an incumbent LEC provides physical collocation, virtual collocation, or both, the incumbent LEC shall:

- (1) provide an interconnection point or points, physically accessible by both the incumbent LEC and the collocating telecommunications carrier, at which the fiber optic cable carrying an interconnector's circuits can enter the incumbent LEC's premises, provided that the incumbent LEC shall designate interconnection points as close as reasonably possible to its premises;
- (2) provide at least two such interconnection points at each incumbent LEC premises at which there are at least two entry points for the incumbent LEC's cable facilities, and at which space is available for new facilities in at least two of those entry points;
- (3) permit interconnection of copper or coaxial cable if such interconnection is first approved by the state commission; and
- (4) permit physical collocation of microwave transmission facilities except where such collocation is not practical for technical reasons or because of space limitations, in which case virtual collocation of such facilities is required where technically feasible.

NOTE 9.1 51.323(i)

As provided herein, an incumbent LEC may require reasonable security arrangements to protect its equipment and ensure network reliability. An incumbent LEC may only impose security arrangements that are as stringent as the security arrangements that incumbent LECs maintain at their own premises for their own employees or authorized contractors. An incumbent LEC must allow collocating parties to access their collocated equipment 24 hours a day, seven days a week, without requiring either a security escort of any kind or delaying a competitor's employee's entry into the incumbent LEC's premises. Reasonable security measures that the incumbent LEC may adopt include:

- (1) installing security cameras or other monitoring systems; or
- (2) requiring competitive LEC personnel to use badges with computerized tracking systems; or

- (3) requiring competitive LEC employees to undergo the same level of security training, or its equivalent, that the incumbent's own employees, or third party contractors providing similar functions, must undergo, provided, however, that the incumbent LEC may not require competitive LEC employees to receive such training from the incumbent LEC itself, but must provide information to the competitive LEC on the specific type of training required so the competitive LEC's employees can conduct their own training.

NOTE 9.2 51.323(b)

An incumbent LEC shall permit the collocation of any type of equipment used or useful for interconnection or access to unbundled network elements. Whenever an incumbent LEC objects to collocation of equipment by a requesting telecommunications carrier for the purposes within the scope of section 251(c)(6) of the Act, the incumbent LEC shall prove to the state commission that the equipment will not be actually used by the telecommunications carrier for the purpose of obtaining interconnection or access to unbundled network elements. An incumbent LEC may not object to the collocation of equipment on the grounds that the equipment does not comply with safety or engineering standards that are more stringent than the safety or engineering standards that the incumbent LEC applies to its own equipment. An incumbent LEC may not object to the collocation of equipment on the grounds that the equipment fails to comply with National Equipment and Building Specifications performance standards. An incumbent LEC that denies collocation of a competitor's equipment, citing safety standards, must provide to the competitive LEC within five business days of the denial a list of all equipment that the incumbent LEC locates within the premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that the incumbent LEC contends the competitor's equipment fails to meet. Equipment used for interconnection and access to unbundled network elements includes, but is not limited to.

- (1) Transmission equipment including, but not limited to, optical terminating equipment and multiplexers, and
- (2) Equipment being collocated to terminate basic transmission facilities pursuant to §§ 66.1401 and 64.1402 of this chapter as of August 1, 1996.
- (3) Digital subscriber line access multiplexers, routers, asynchronous transfer mode multiplexers, and remote switching modules.

51.323(c)

Nothing in this section requires an incumbent LEC to permit collocation of equipment used solely for switching or solely to provide enhanced services; provided, however, that an incumbent LEC may not place any limitations on the ability of requesting carriers to use all the features, functions, and capabilities of equipment collocated pursuant to subsection (b), including, but not limited to, switching and routing features and functions and enhanced services functionalities.

51.323(g)

An incumbent LEC shall permit a collocating telecommunications carriers to collocate equipment and connect such equipment to unbundled network transmission elements obtained from the incumbent LEC, and shall not require such telecommunications carriers to bring their own transmission facilities to the incumbent LEC's premises in which they seek to collocate equipment.

- 9.4 SWBT will provide adequate lighting, ventilation, power, heat, air conditioning, and other environmental conditions for BCI's space and equipment using the same standards that SWBT uses for those elements for its own similar space and equipment, or using other standards to which BCI and SWBT may agree in writing.
- 9.5 Where security will permit, and where available, SWBT will provide access to eyewash stations, shower stations, bathrooms, and drinking water within the Eligible Structure. Whenever possible, SWBT will design Collocated Space to allow for such access on a twenty-four (24) hour per day, seven (7) day per week basis. **NOTE 9.5 (Next Page)**
- 9.6 SWBT will provide transmission and power cabling diversity to the Collocated Space under the same guidelines then used for diversity cabling for SWBT within the Eligible Structure. On a custom work order basis, SWBT will consider BCI's special cabling needs and will implement them where possible.
- 9.7 SWBT will notify BCI prior to the scheduled start dates of all construction activities (including power additions or modifications) in the general area of BCI's Collocated Space with potential to disrupt BCI's services. If possible, SWBT will provide such notification to BCI at least fourteen (14) days before the scheduled start date of such construction activity. SWBT will inform BCI as soon as practicable by telephone of all emergency-related activities that SWBT or its subcontractors are performing in the general area of the BCI Collocated Space, or in the general area of the AC and DC power plants which support BCI equipment. If possible, notification of any emergency-related activity will be made immediately prior to the start of the activity so that BCI may take reasonable actions necessary to protect BCI's Collocated Space.
- 9.8 SWBT will comply with all federal and state laws regarding environmental, health and safety issues as applicable to SWBT. SWBT is required to provide BCI a copy of any environmental, health and safety questionnaires that SWBT has previously completed or is required to complete in the future for its own purposes.

10.0 Use of Collocated Space

- 10.1 The Collocated Space is to be used by BCI for access to SWBT's unbundled network elements and for interconnection to SWBT and, subject to Section 10.6 hereof, other collocators. Consistent with the nature and the environment of the Eligible Structure and Collocated Space, BCI shall not use the Collocated Space for office, retail, or sales purposes. No signage or markings of any kind by BCI shall be permitted on the Eligible Structure or on the SWBT grounds surrounding the Eligible Structure. BCI may, however, place signage and markings on the inside of its Collocated Space.
- 10.2 BCI will list all of its equipment and facilities that will be placed within the Collocated Space, with the associated power requirements, floor loading, and heat release of each piece on the "Physical Collocation Application Form." BCI warrants that this list is complete and accurate.

NOTE 9.5 51.323(i)

As provided herein, an incumbent LEC may require reasonable security arrangements to protect its equipment and ensure network reliability. An incumbent LEC may only impose security arrangements that are as stringent as the security arrangements that incumbent LECs maintain at their own premises for their own employees or authorized contractors. An incumbent LEC must allow collocating parties to access their collocated equipment 24 hours a day, seven days a week, without requiring either a security escort of any kind or delaying a competitor's employee's entry into the incumbent LEC's premises. Reasonable security measures that the incumbent LEC may adopt include:

- (1) installing security cameras or other monitoring systems; or
- (2) requiring competitive LEC personnel to use badges with computerized tracking systems; or
- (3) requiring competitive LEC employees to undergo the same level of security training, or its equivalent, that the incumbent's own employees, or third party contractors providing similar functions, must undergo, provided, however, that the incumbent LEC may not require competitive LEC employees to receive such training from the incumbent LEC itself, but must provide information to the competitive LEC on the specific type of training required so the competitive LEC's employees can conduct their own training.

Any incompleteness or inaccuracy may be a material breach of the particular physical collocation arrangement to which that list was associated. BCI shall not place or leave any equipment or facilities within the Collocated Space beyond those listed on the Physical Collocation Application Form without the express written consent of SWBT, as specified in Section 10.2.1 below.

- 10.2.1 In the event that, subsequent to the submission of the Physical Collocation Application Form, BCI desires to place in the Collocated Space any equipment or facilities not listed on the Physical Collocation Application Form, BCI shall furnish to SWBT a written list and description of the equipment or facilities substantially in the same form. SWBT may provide such written consent or may condition any such consent on necessary additional charges arising from the subsequent request, including any engineering design charges and any additional requirements such as power and environmental requirements for such listed and described equipment and/or facilities. SWBT will not unreasonably withhold consent under this Section 10.2.1.
- 10.2.2 Except as may be required by law, including state and federal regulations, the foregoing imposes no obligation upon SWBT to purchase additional plant or equipment, relinquish used or forecasted space or facilities, or to undertake the construction of new quarters or to construct additions to existing quarters in order to satisfy a subsequent request for additional space or the placement of additional equipment or facilities.
- 10.3 BCI may use the Collocated Space for placement of equipment and facilities only. BCI's employees, agents and contractors shall be permitted access to the Collocated Space at all times, provided that BCI's employees, agents and contractors comply with SWBT's policies and practices pertaining to fire, safety and security. BCI agrees to comply promptly with all laws, ordinances and regulations affecting the use of the Collocated Space. Upon BCI's termination of the use of the Collocated Space, BCI shall surrender the Collocated Space to SWBT, in the same condition as when first occupied by BCI, ordinary wear and tear excepted.
NOTE 10.3 (Next Page)
- 10.4 BCI equipment or operating practices representing a significant demonstrable technical threat to SWBT's network or facilities, including the Eligible Structure, are strictly prohibited.
NOTE 10.4 (Next Page)
- 10.5 Notwithstanding any other provision hereof, the characteristics and methods of operation of any equipment or facilities placed in Collocated Space shall not interfere with or impair service over any facilities of SWBT or the facilities of any other person or entity located in the Eligible Structure; create hazards for or cause damage to those facilities or to the Eligible Structure; impair the privacy of any communications carried in, from, or through the Eligible Structure; or create hazards or cause physical harm to any individual or the public. Any of the foregoing events in this Section may be a material breach of the particular physical collocation arrangement.

NOTE. 10.3 51.323(i)

As provided herein, an incumbent LEC may require reasonable security arrangements to protect its equipment and ensure network reliability. An incumbent LEC may only impose security arrangements that are as stringent as the security arrangements that incumbent LECs maintain at their own premises for their own employees or authorized contractors. An incumbent LEC must allow collocating parties to access their collocated equipment 24 hours a day, seven days a week, without requiring either a security escort of any kind or delaying a competitor's employee's entry into the incumbent LEC's premises. Reasonable security measures that the incumbent LEC may adopt include:

- (1) installing security cameras or other monitoring systems; or
- (2) requiring competitive LEC personnel to use badges with computerized tracking systems; or
- (3) requiring competitive LEC employees to undergo the same level of security training, or its equivalent, that the incumbent's own employees, or third party contractors providing similar functions, must undergo, provided, however, that the incumbent LEC may not require competitive LEC employees to receive such training from the incumbent LEC itself, but must provide information to the competitive LEC on the specific type of training required so the competitive LEC's employees can conduct their own training.

NOTE 10.4 51.323(b)

An incumbent LEC shall permit the collocation of any type of equipment used or useful for interconnection or access to unbundled network elements. Whenever an incumbent LEC objects to collocation of equipment by a requesting telecommunications carrier for the purposes within the scope of section 251(c)(6) of the Act, the incumbent LEC shall prove to the state commission that the equipment will not be actually used by the telecommunications carrier for the purpose of obtaining interconnection or access to unbundled network elements. An incumbent LEC may not object to the collocation of equipment on the grounds that the equipment does not comply with safety or engineering standards that are more stringent than the safety or engineering standards that the incumbent LEC applies to its own equipment. An incumbent LEC may not object to the collocation of equipment on the grounds that the equipment fails to comply with National Equipment and Building Specifications performance standards. An incumbent LEC that denies collocation of a competitor's equipment, citing safety standards, must

provide to the competitive LEC within five business days of the denial a list of all equipment that the incumbent LEC locates within the premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that the incumbent LEC contends the competitor's equipment fails to meet. Equipment used for interconnection and access to unbundled network elements includes, but is not limited to.

- (1) Transmission equipment including, but not limited to, optical terminating equipment and multiplexers, and
- (2) Equipment being collocated to terminate basic transmission facilities pursuant to §§ 66.1401 and 64.1402 of this chapter as of August 1, 1996.
- (3) Digital subscriber line access multiplexers, routers, asynchronous transfer mode multiplexers, and remote switching modules.

- 10.6 To the extent that SWBT is required by law, SWBT will permit BCI to interconnect its network with that of another collocated party at the same Eligible Structure pursuant to this Section 10.6 and its subsections.

NOTE 10.6 (Next Page)

- 10.6.1 Upon BCI's written request and as soon as practicable, SWBT will provide the connection between collocation arrangements on a time and materials basis whenever BCI and another collocator cannot for technical reasons provide the connection for themselves by passing the facility through the cage wall(s). SWBT will provide nothing more than the labor and physical structure(s) necessary for the collocator(s) to pull facilities provided by one collocator from its cage to the cage of another collocator. If the collocators are not located on the same floor and cannot physically pull the cable themselves through the SWBT provided structure(s), SWBT will perform the cable pull on an time and materials basis. At no time will the collocators be allowed access to any portion of the central office other than the collocation area. SWBT will not make the physical connection within the collocator's cage, SWBT will not accept any liability for the cable or the connections, and SWBT will not maintain any records concerning these connections.
- 10.7 Subject to this Appendix, BCI may place or install in or on the Collocated Space such fixtures and equipment as it shall deem desirable for the conduct of business. Personal property, fixtures and equipment placed by BCI in the Collocated Space shall not become a part of the Collocated Space, even if nailed, screwed otherwise fastened to the Collocated Space, but shall retain their status as personality and may be removed by BCI at any time. Any damage caused to the Collocated Space by the removal of such property shall be promptly repaired by BCI at its expense.
- 10.8 In no case shall BCI or any person purporting to be acting through or on behalf of BCI make any rearrangement, modification, improvement, addition, repair, or other alteration to Collocated Space or the Eligible Structure without the advance written permission and direction of SWBT, which permission and direction will not be unreasonably withheld. SWBT will consider a modification, improvement, addition, repair, or other alteration requested by BCI, provided that SWBT will have the right to reject or modify any such request to the extent permitted by law. The cost of any such construction shall be paid by BCI in accordance with SWBT's then-standard custom work order process.
- 11.0 Standards
- 11.1 This Appendix and the physical collocation provided hereunder is made available subject to and in accordance with the standards set forth in (i) Bellcore Network Equipment Building System (NEBS) Generic Requirements (GR-63-CORE and GR-1089-CORE), as may be amended at any time and from time to time, and any successor documents; (ii) SWBT's Emergency Operating Procedures, as may be amended from time to time; and (iii) any statutory and/or regulatory requirements in effect at the execution of this Agreement or that subsequently become effective and then when effective. BCI shall strictly observe and abide by the standards

NOTE 10.6 51.323(h)

An incumbent LEC shall permit a collocating telecommunications carrier to interconnect its network with that of another collocating telecommunications carrier at the incumbent LEC's premises and to connect its collocated equipment to the collocated equipment of another telecommunications carrier within the same premises provided that the collocated equipment is also used for interconnection with the incumbent LEC or for access to the incumbent LEC's unbundled network elements.

- (1) An incumbent LEC shall provide, at the request of a collocating telecommunications carrier, the connection between the equipment in the collocated spaces of two or more telecommunications carriers. The incumbent LEC must permit any collocating telecommunications carrier to construct its own connection between the carrier's equipment and that of one or more collocating carriers, if the telecommunications carrier does not request the incumbent LEC's construction of such facilities. The incumbent LEC must permit the requesting carrier to construct such facilities using copper or optical fiber equipment.
- (2) An incumbent LEC shall permit collocating telecommunications carriers to place their own connecting transmission facilities within the incumbent LEC's premises outside of the actual physical collocation space, subject only to reasonable safety limitations.

set forth in each; SWBT shall strictly observe and abide by the standards set forth in SWBT's Emergency Operating Procedures and the statutory and/or regulatory requirements referenced above. BCI acknowledges the standards set forth in SWBT's publications entitled "Interconnector's Technical Publication for Physical Collocation" dated February 1997 and "Technical Publication 76300, Installation Guide," and BCI will follow those publications, except as those publications are modified by this Appendix. In the event of any inconsistency between this Appendix and SWBT's "Interconnector's Technical Publication for Physical Collocation" and "Technical Publication 76300, Installation Guide," and any revision of the foregoing publications (whether or not objected to by BCI), this Appendix will control.

NOTE 11.1 (Next Page)

- 11.2 Within ninety (90) days of the effective date of the Interconnection Agreement, BCI may object in writing to any of the provisions in SWBT's "Interconnector's Technical Publication for Physical Collocation," "Technical Publication 76300, Installation Guide," or SWBT's Emergency Operating Procedures, providing therewith an explanation for each such objection. At BCI's discretion, BCI may pursue such objections informally with SWBT, may pursue them with the State Commission, or may invoke the applicable dispute resolution provisions of this Appendix.
- 11.3 Any revision to SWBT's Technical Publication for Physical Collocation, its Technical Publication 76300, or its Emergency Operating Procedures shall become effective and thereafter applicable under this Appendix thirty (30) days after such revision is released by SWBT. At BCI's discretion, BCI may pursue objections to these revisions informally with SWBT or with the State Commission, or may invoke the applicable dispute resolution provisions of this Agreement. Notwithstanding the foregoing, any revision made to address situations potentially harmful to SWBT's network, the Eligible Structure, or the Collocated Space, or to comply with statutory and/or regulatory requirements shall become effective immediately. SWBT will immediately notify BCI of any such revisions, and BCI may object to those revisions in the manner and with the effect specified in this section 11.3.
- 11.4 BCI warrants and represents compliance with the Bellcore Network Equipment Building System (NEBS) Generic Requirements (GR-63-CORE and GR-1089-CORE) for all equipment and facilities placed in the Collocated Space unless otherwise permitted by SWBT in writing on a case-by-case basis. BCI also warrants and represents that any equipment or facilities that may be placed in the Collocated Space pursuant to Section 10.2.1 or otherwise shall be so compliant. DISCLOSURE OF ANY NON-COMPLIANT ITEM IN THE PHYSICAL COLLOCATION APPLICATION FORM, PURSUANT TO SECTION 10.2.1, OR OTHERWISE, SHALL NOT QUALIFY THIS ABSOLUTE CERTIFICATION IN ANY MANNER.

NOTE 11.4 (Next Page)

12.0 Responsibilities of the Parties

- 12.1 BCI and SWBT each are responsible for providing to the other's personnel a contact number for technical personnel who are reasonably accessible 24 hours a day, 7 days a week and who are

NOTE 11.1 SWBT must comply with FCC rules. See Appendix Collocation Section 1.1.

NOTE 11.4 51.323(b)

An incumbent LEC shall permit the collocation of any type of equipment used or useful for interconnection or access to unbundled network elements. Whenever an incumbent LEC objects to collocation of equipment by a requesting telecommunications carrier for the purposes within the scope of section 251(c)(6) of the Act, the incumbent LEC shall prove to the state commission that the equipment will not be actually used by the telecommunications carrier for the purpose of obtaining interconnection or access to unbundled network elements. An incumbent LEC may not object to the collocation of equipment on the grounds that the equipment does not comply with safety or engineering standards that are more stringent than the safety or engineering standards that the incumbent LEC applies to its own equipment. An incumbent LEC may not object to the collocation of equipment on the grounds that the equipment fails to comply with National Equipment and Building Specifications performance standards. An incumbent LEC that denies collocation of a competitor's equipment, citing safety standards, must provide to the competitive LEC within five business days of the denial a list of all equipment that the incumbent LEC locates within the premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that the incumbent LEC contends the competitor's equipment fails to meet. Equipment used for interconnection and access to unbundled network elements includes, but is not limited to.

- (1) Transmission equipment including, but not limited to, optical terminating equipment and multiplexers, and
- (2) Equipment being collocated to terminate basic transmission facilities pursuant to §§ 66.1401 and 64.1402 of this chapter as of August 1, 1996.
- (3) Digital subscriber line access multiplexers, routers, asynchronous transfer mode multiplexers, and remote switching modules.

knowledgeable regarding the technical implementation of the collocation provided for in the particular Eligible Structure.

- 12.2 BCI and SWBT are each responsible for providing trouble report upon request from the other.
- 12.3 BCI is responsible for bringing the transmission media permitted by Section 8.1 to the points of entry to the Eligible Structure designated by SWBT, and for leaving sufficient cable length in order for SWBT to fully extend the BCI-provided cable through the cable vault to the Collocated Space. The cost of extending the cable to the collocation space will be identified in the estimated price quotation. SWBT shall base the cost upon the loaded labor rate multiplied by the number of work hours required to perform the task and other charges that may be appropriate and specific to the work project in question.
- 12.4 Upon reasonable notice to SWBT, SWBT will fully extend the BCI-provided cable through the cable vault to the Collocated Space on the same day that BCI brings the BCI-provided cable to the points of entry to the Eligible Structure designated by SWBT. While performing this operation, SWBT will be liable for any damage to the BCI-provided cable that results from the placing operation. As used in this section, "same day" means same business day, provided that BCI makes cables available at the points of entry to the Eligible Structure designated by SWBT by noon; otherwise, "same day" means the same time that the cable is made available on the next business day.
- 12.5 BCI is responsible for removing any equipment, property or other items that it brings into the Collocated Space or any other part of the Eligible Structure. If BCI fails to remove any equipment, property, or other items from the Collocated Space within thirty (30) days after discontinuance of use, SWBT may perform the removal and shall charge BCI on a time and materials basis applicable to custom work. Further, in addition to the other provisions herein, BCI shall indemnify and hold SWBT harmless from any and all claims, expenses, fees, or other costs associated with any such removal by SWBT.
- 12.6 BCI is solely responsible for the design, engineering, testing, performance, and maintenance of the equipment and facilities used by BCI in the Collocated Space. BCI will be responsible for servicing, supplying, repairing, installing and maintaining the following facilities within the Collocated Space: (a) its fiber optic, coaxial, or copper cable(s), as applicable; (b) its equipment; (c) required point of termination cross connects; (d) point of termination maintenance, including replacement of fuses and circuit breaker restoration, if and as required; and (e) the connection cable and associated equipment which may be required within the Collocated Space to the point(s) of termination. SWBT NEITHER ACCEPTS NOR ASSUMES ANY RESPONSIBILITY WHATSOEVER IN ANY OF THESE AREAS.
- 12.7 BCI and SWBT each are responsible for immediate verbal notification to the other of significant outages or operations problems which could impact or degrade the other's network,

switches, or services, and for providing an estimated clearing time for restoral. In addition, written notification must be provided within twenty-four (24) hours.

12.8 BCI and SWBT are each responsible for coordinating with the other to ensure that services are installed in accordance with the service request.

12.9 BCI is responsible for testing to identify and clear a trouble when the trouble has been isolated to an BCI-provided facility or piece of equipment. SWBT is responsible for testing to identify and clear a trouble when the trouble has been isolated to a SWBT-facility or piece of equipment.

13.0 Services, Utilities, Maintenance, and Facilities

13.1 SWBT shall maintain for the Eligible Structure customary building services and utilities (excluding telephone facilities), including janitor and elevator services, 24 hours a day. BCI shall be permitted a single-line business telephone service for the Collocated Space. If technically feasible for BCI in the Collocated Space, BCI may provide its own telephone service; otherwise, SWBT will provide that service subject to applicable SWBT tariffs. Upon BCI's request, such SWBT service shall be available at the BCI Collocated Space on the day that the space is turned over to BCI by SWBT.

13.2 SWBT will provide negative DC and AC power, back-up power, heat, air conditioning and other environmental support necessary for BCI's equipment, in the same manner that it provides such support items for its own equipment within its Eligible Structures.

13.3 SWBT shall maintain the exterior of the Eligible Structure and grounds, and all entrances, stairways, passageways, and exits used by BCI to access the Collocated Space.

13.4 SWBT agrees to make, at its expense, all changes and additions to the Eligible Structure required by laws, ordinances, orders or regulations of any municipality, county, state, or other public authority including the furnishing of required sanitary facilities and fire protection facilities, except fire protection facilities specially required because of the installation of telephone or electronic equipment and fixtures in the Collocated Space.

13.5 SWBT will provide BCI with access to, and use of, electrical power where available (e.g., 48 volt D/C, 110 volt A/C convenience outlets) at the Collocated Space. At a minimum, SWBT will supply power to BCI at parity with that provided by SWBT to itself or to any third party. If SWBT performance, availability, or restoration falls below industry standards, SWBT will bring itself into compliance with such industry standards as soon as technologically feasible. All D/C power to the Collocated Space will be from protected power sources. Upon BCI's request, SWBT will provide requested A/C power to the Collocated Space from protected power sources.

- 13.5.1 "Power" as referenced in this document refers to any electrical power source supplied by SWBT for BCI equipment, and it includes all superstructure, infrastructure, and overhead facilities for the delivery of power, including, but not limited to, cable, cable racks and bus bars.
- 13.5.2 Central office power supplied by SWBT into an BCI Collocated Space shall be supplied in the form of power feeders (cables) on cable racking as required. SWBT will provide in the Collocated Space a ground electrode that is connected to a central office ground and/or an isolated ground, where requested and where technically feasible. The power feeders (cables) will support the requested quantity and capacity of BCI equipment. The location of the termination and the ground electrode will be as requested by BCI or as mutually agreed to by the parties. The number of feeder cables will be specified by BCI in writing based on the manufacturer's recommendation for the equipment and facilities collocated by BCI.
- 13.5.3 SWBT power equipment supporting BCI's equipment will: (1) comply with applicable industry standards (e.g., Bellcore NEBS and IEEE) or manufacturer's equipment power requirement specifications for equipment installation, cabling practices, and physical equipment layout; (2) provide feeder capacity and quantity to support the ultimate equipment layout for BCI equipment in accordance with BCI's collocation request; and (3) provide electrical safety procedures and devices in conformance with the OSHA or industry guidelines.

14.0 Quiet Enjoyment

- 14.1 Subject to the other provisions of this Appendix, SWBT covenants that it has full right and authority to permit the use of the Collocated Space by BCI and that, so long as BCI performs all of its obligations under this Appendix, BCI may peaceably and quietly enjoy the Collocated Space during the term of this Appendix.

15.0 Assignment

- 15.1 BCI may permit, with the written approval of SWBT any third party to jointly occupy BCI's Collocated Space for the purposes of interconnecting with the SWBT network and/or UNEs. Such approval of SWBT will not be unreasonably withheld. In such instance, BCI will retain its obligation to pay a monthly charge to SWBT for the Collocated Space. BCI may interconnect with other collocators at the same Eligible Structure, in accord with Section 10.6 above.

16.0 Casualty Loss

- 16.1 If the Collocated Space is damaged by fire or other casualty, and the Collocated Space is not rendered untenable in whole or in part, SWBT shall repair the Collocated Space at its expense (as hereafter limited) and the Monthly Charge will not be abated.

- 16.2 If the Collocated Space is damaged by fire or other casualty, and the Collocated Space is rendered untenable in whole or in part and such damage or destruction can be repaired within a reasonable time, SWBT has the option to repair the Collocated Space at its expense (as hereafter limited) and the Monthly Charge shall be abated while BCI is deprived of use of the Collocated Space. If the Collocated Space cannot be repaired within a reasonable time, or SWBT opts not to rebuild, then the collocation arrangement with respect to that Collocated Space will terminate. Upon BCI's written request, SWBT will provide to BCI a comparable suitable collocation arrangement at another mutually agreeable location.
- 16.3 Any obligation on the part of SWBT to repair the Collocated Space shall be limited to repairing, restoring, and rebuilding the Collocated Space as prepared by SWBT for BCI and shall not include any obligation to repair, restore, rebuild or replace any alterations or improvements made by BCI or by SWBT on request of BCI; or any fixture or other equipment installed in the Collocated Space by BCI or by SWBT on request of BCI. The limitation contained in this section will not apply to any damage resulting from intentional misconduct or a negligent act or omission by SWBT, its employees, or agents.
- 16.4 In the event that an Eligible Structure is so damaged by fire or other casualty that closing, demolition, or substantial alteration or reconstruction of that Eligible Structure shall be advisable in SWBT's opinion, then, notwithstanding that any particular Collocated Space in the same Eligible Structure may not be damaged, SWBT, at its option, may terminate the collocation arrangement with respect to a Collocated Space in the same Eligible Structure by giving BCI ten (10) days prior written notice within thirty (30) days following the date of such occurrence.
- 17.0 Re-entry
- 17.1 If BCI materially breaches any of its obligations under this Appendix with respect to a particular Collocated Space, and the breach shall continue for forty-five (45) days after BCI's receipt of written notice of breach, SWBT may, immediately or at any time thereafter, without notice or demand, enter and repossess that particular Collocated Space, expel BCI and any person or entity claiming under BCI, remove BCI's property, forcibly if necessary, and terminate the collocation arrangement with respect to that particular Collocated Space, without prejudice to any other remedies SWBT might have. SWBT must notify BCI by facsimile that it has repossessed a Collocated Space within twenty-four (24) hours of its repossession of that Collocated Space. Thereafter, until the breach is cured or otherwise resolved by the parties, SWBT may also refuse additional applications for collocation and/or refuse to complete any pending orders for additional space by BCI in the Eligible Structure where that Collocated Space is located.
- 17.2 If BCI is declared bankrupt or insolvent or makes an assignment for the benefit of creditors, SWBT may, immediately or at any time thereafter, without notice or demand, enter and repossess any and all Collocated Spaces, expel BCI and any person or entity claiming under

BCI, remove BCI's property, forcibly if necessary, and terminate all collocation arrangements with respect to those Collocated Spaces, without prejudice to any other remedies SWBT might have. SWBT must notify BCI by facsimile that it has repossessed a Collocated Space within twenty-four (24) hours of its repossession of that Collocated Space. SWBT may also refuse additional applications for service and/or refuse to complete any pending orders for additional space or service by BCI at any time thereafter.

- 17.3 SWBT may refuse requests for additional space in Eligible Structures if BCI is in material breach for forty-five days or more of this Appendix, including BCI's owing any past due charges hereunder. In any and each such event, BCI hereby releases and shall hold SWBT harmless from any duty to negotiate with BCI or any of its affiliates for any additional space or physical collocations.

18.0 SWBT's Right of Access

- 18.1 SWBT, its agents, employees, and other SWBT-authorized persons shall have the right to enter Collocated Space at any reasonable time on three days advance notice of the time and purpose of the entry to examine its condition, make repairs required to be made by SWBT hereunder, and for any other purpose deemed reasonable by SWBT. SWBT may access the Collocated Space for purpose of averting any threat of harm imposed by BCI or its equipment or facilities upon the operation of SWBT equipment, facilities and/or personnel located outside of the Collocated Space; in such case, SWBT will immediately notify BCI by telephone of that entry and will leave written notice of entry in the Collocated Space. If routine inspections are required, they shall be conducted at a mutually agreeable time.

19.0 Limitation of Liability

- 19.1 Limitation of liability provisions covering the matters addressed in this Appendix are contained in the General Terms and Conditions portion of this Agreement.
- 19.2 BCI acknowledges and understands that SWBT may provide space in or access to its Eligible Structures to other persons or entities ("Others"), which may include competitors of BCI; that such space may be close to the Collocated Space, possibly including space adjacent to the Collocated Space and/or with access to the outside of the Collocated Space; and that the cage around the Collocated Space is a permeable boundary that will not prevent the Others from observing or even damaging BCI's equipment and facilities.

20.0 Indemnification

- 20.1 Indemnification provisions covering the matters addressed in this Appendix are contained in the General Terms and Conditions Portion of the Agreement.

21.0 Dispute Resolution

- 21.1 All disputes arising under this Appendix will be resolved in accordance with the dispute resolution procedures set forth in the General Terms and Conditions portion of this Agreement, with the exception that disputes relating to SWBT's price quotation or Completion Interval may be brought to the Commission for resolution, as set forth in this Appendix, and that disputes relating to the content of SWBT's technical publications related to collocation will be resolved in accordance with Section 11.2 above.

22.0 Insurance

- 22.1 BCI shall, at its sole cost and expense procure, maintain, pay for and keep in force the insurance coverage specified below and any additional insurance and/or bonds required by law and underwritten by insurance companies having a BEST Insurance rating of A+VII or better, and which are authorized to do business in the state of Missouri. SWBT shall be named as an ADDITIONAL INSURED on BCI's general liability policy. BCI may meet the insurance coverage requirements specified below utilizing its captive insurer or by establishing that it is authorized under the laws of the state of Missouri to self-insure for any of the coverage requirements specified below.
- 22.2 BCI shall maintain Comprehensive General Liability insurance including Products/Completed Operations Liability insurance including the Broad Form Comprehensive General Liability endorsement (or its equivalent(s)) with a Combined Single limit for Bodily Injury and Property Damage of \$1,000,000. Said coverage shall include the contractual, independent contractors products/completed operations, broad form property, personal injury and fire legal liability.
- 22.3 BCI shall maintain, if use of an automobile is required or if BCI is provided or otherwise allowed parking space by SWBT in connection with this Appendix, automobile liability insurance with minimum limits of \$1 million each accident for Bodily Injury, Death and Property Damage combine. Coverage shall extend to all owned, hired and non-owned automobiles. BCI hereby waives its rights of recovery against SWBT for damage to BCI's vehicles while on the grounds of the Eligible Structure and BCI will hold SWBT harmless and indemnify it with respect to any such damage or damage to vehicles of BCI's employees, contractors, invitees, licensees or agents.
- 22.4 BCI shall maintain Workers' Compensation insurance with benefits afforded in accordance with the laws of the state of Missouri.
- 22.5 BCI shall maintain Employer's Liability insurance with minimum limits of \$100,000 for bodily injury by accident, \$100,000 for bodily injury by disease per employee and \$500,000 for bodily injury by disease policy aggregate.

- 22.6 BCI shall maintain Umbrella/Excess liability coverage in an amount of \$5 million excess of coverage specified above.
- 22.7 BCI shall maintain all Risk Property coverage on a full replacement cost basis insuring all of BCI's personal property situated on or within the Eligible Structure or the Collocated Space. BCI releases SWBT from and waives its right of recovery, claim, action or cause of action against SWBT, its agents, directors, officers, employees, independent contractors, and other representatives for any loss or damage that may occur to equipment or any other personal property belonging to BCI or located on or in the space at the instance of BCI by reason of fire or water or the elements or any other risks would customarily be included in a standard all risk property insurance policy covering such property, regardless of cause or origin, including negligence of SWBT, its agents, directors, officers, employees, independent contractors, and other representatives. Property insurance on BCI's fixtures and other personal property shall contain a waiver of subrogation against SWBT, and any rights of BCI against SWBT for damage to BCI's fixtures or personal property are hereby waived.
- 22.8 SWBT has no liability for loss of profit or revenues should an interruption of service occur.
- 22.9 The limits set forth above may be increased by SWBT from time to time during the term of occupancy to at least such minimum limits as shall then be customary in respect of comparable situations within the existing SWBT Eligible Structures.
- 22.10 All policies purchased by BCI shall be deemed to be primary and not contributing to or in excess of any similar coverage purchased by SWBT.
- 22.11 All insurance must be in effect on or before occupancy date and shall remain in force as long as any of BCI's facilities or equipment remain within the Collocated Space or the Eligible Structure. If BCI fails to maintain the coverage, SWBT may pay the premiums thereon and, if so, shall be reimbursed by BCI.
- 22.12 BCI shall submit certificates of insurance and copies of policies reflecting the coverages specified above prior to the commencement of the work called for in this Appendix. BCI shall arrange for SWBT to receive thirty (30) days advance written notice from BCI's insurance company(ies) of cancellation, non-renewal or substantial alteration of its terms.
- 22.13 BCI must also conform to the recommendation(s) made by SWBT's Property Insurance Company which BCI has already agreed to or to such recommendations as it shall hereafter agree to. With respect to recommendations for which SWBT seeks BCI's agreement, SWBT will provide BCI copies of recommendations and compliance requirements by its Property Insurer for BCI's review.
- 22.14 Failure to comply with the provisions of this section will be deemed a material violation of this Appendix.

22.15 Through this Appendix, BCI is placing telecommunications equipment and facilities on SWBT property for the purpose of access to SWBT's unbundled network elements and for interconnection to SWBT and, subject to section 10.6 hereof, other collocators. The parties agree that this Appendix does not constitute, and shall not be asserted to constitute, an admission or waiver or precedent with any State commission, the Federal Communications Commission, any other regulatory body, and State and Federal Court, or in any other form that SWBT has agreed or acquiesced that any piece of BCI equipment or facility is Aequipment necessary for interconnection or access to unbundled network elements under 47 U.S.C. 251(c)(6).

23.0 Miscellaneous

23.1 If BCI constitutes more than one person, partnership, corporation, or other legal entities, the obligation of all such entities under this Appendix is joint and several.

23.2 This Appendix may not be modified by the Parties except by a subsequent written document executed by the Parties.

23.3 Whenever this Appendix requires the consent of a party, any request for such consent shall be in writing.

23.4 Neither party shall be deemed to have waived or impaired any right, authority, or option reserved by this Appendix (including the right to demand exact compliance with every term, condition and covenant herein, or to declare any breach hereof to be a default and to terminate this Appendix prior to the expiration of its term), by virtue of any custom or practice of the parties at variance with the terms hereof or any failure, refusal or neglect to exercise any right under this Appendix or to insist upon exact compliance by the other with its obligations hereunder, including any rule or procedure, or any waiver, forbearance, delay, failure or omission by SWBT to exercise any right, power or option, whether of the same, similar or different nature, with respect to one or more other collocators.

23.5 No remedy herein conferred upon is intended to be exclusive of any other remedy in equity, provided by law, or otherwise, but each shall be in addition to every other such remedy.

23.6 The BCI and all persons acting through or on behalf of BCI shall comply with the provisions of the Fair Labor Standards Act, the Occupational Safety and Health Act, and all other applicable federal, state, county, and local laws, ordinances, regulations and codes (including identification and procurement of required permits, certificates, approvals and inspections) in its performance hereunder.



July 26, 1999

Mr. Errol S. Phipps, Attorney
Southwestern Bell Telephone
One Bell Plaza
Room 2900
Dallas, TX 75202

Dear Mr. Phipps,

As you know, BroadSpan Communications, Inc. dba Primary Network Communications ("PNC") is in the process of implementing physical collocation pursuant to its interconnection agreement with Southwestern Bell Telephone Company ("SWBT") in order to provide facilities-based telecommunications service in Missouri. Toward that end, PNC has filed requests for physical collocation in accordance with the terms of the interconnection agreement and applicable law. The responses PNC received to those requests do not all comport with the terms of the interconnection agreement and applicable law.

Early this spring, PNC began the process of requesting physical collocation pursuant to the interconnection agreement. On March 31, 1999, the Federal Communications Commission issued a Report and Order that, among other things, promulgated rules, to be effective on June 1, 1999. Those rules require that incumbent LECs allow competitive LECs to implement physical collocation without the necessity of cages, walls, separate entrances, etc. and permitted implementation using smaller minimum areas for collocation than incumbent LECs generally permitted.

Although such physical collocation arrangements are referred to as "cageless collocation" in industry vernacular, the FCC did not create a third type of collocation in addition to physical and virtual collocation; it merely specified permissible physical collocation arrangements as discussed above. The rules are generally consistent with the "Appendix Collocation - Missouri" agreement presently in effect between the SWBT and PNC. Specifically, there is no minimum collocation space requirement in the agreement, there is no requirement that a cage or walls be built (see Section 4.1), the agreement already provides that PNC can collocate switching equipment used to gain access to UNEs (Section 9.2), and the agreement gives PNC continuous access to its collocation space (Section 10.3).

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On May 28, 1999, PNC received a SWBT Accessible Letter announcing that it would begin processing "cageless collocations" using a newly developed application form. On June 1, 1999, PNC sent, by overnight mail, five such application forms for the Mehlville, Manchester, Chesterfield, Parkview and Kirkwood central offices in metropolitan St. Louis, Missouri area. SWBT received the applications on June 2, 1999.

During the pendency of those applications, SWBT forwarded to PNC a proposed substitute for the present collocation appendix in the Interconnection Agreement, ostensibly for the purpose of incorporating the new criteria for physical collocation found in the new federal rules. As the proposed changes did more than incorporate those new criteria, on July 21, 1999, PNC informed SWBT that it would not consent to alteration of its physical collocation agreement with SWBT. PNC noted that Section 11.1 of the Appendix Collocation - Missouri provided that "This Appendix and the physical collocation provided hereunder is made available subject to and in accordance with the standards set forth in... (iii) any statutory and/or regulatory requirements in effect at the execution of this Agreement or that subsequently become effective and then when effective." It is PNC's position that this language requires both parties to adhere to legal requirements imposed on them during the effectiveness of the Interconnection Agreement and that portions of the presently effective agreement that do not comport with the federal rules are without force and effect.

On July 22, 1999, PNC received SWBT's quotation for the Mehlville central office. As part of the quotation, SWBT indicated "SWB expects that the interval for this project will be 25.7 weeks (180 days) from SWB's receipt of the check for 50% of the preparation charges, this signed document, and the signed physical collocation agreement". That same day, PNC faxed and sent via overnight mail a letter to Russell Stanley (Director-Industry Markets) at SWBT, advising SWBT that the 180 day interval was unacceptable. Mr. Stanley and Ms Doris Justice phoned Ms Butler and Mr. Phillips at PNC concerning that letter; Mr. Stanley asserted that the Appendix Collocation - Missouri does not apply to PNC's pending physical collocation applications, since he believes it does not address "cageless" collocation. Acknowledging that PNC differed in that opinion, Mr. Stanley asserted, "for the sake of conversation" that Section 3.3.3 allows SWBT to respond with a time frame such as 180 days. PNC noted the "not to exceed three months" clause found in Section 4.12. Mr. Stanley pointed out that Section 4.12 allowed for a longer period if the Parties "otherwise mutually agreed to [it] in writing." Ms Butler informed Mr. Stanley that PNC does not agree to such an extension. Mr. Stanley advised Ms Butler that he would refer this matter to SWBT's legal department.

On July 23, 1999, PNC received SWBT's quotations for the physical collocation requests for Kirkwood, Parkview, Chesterfield and Manchester in which SWBT set forth completion intervals of 180 days for Kirkwood, Parkview & Chesterfield; again PNC informed SWBT that such completion intervals were noncompliant with the Interconnection Agreement between the Parties and unacceptable to PNC.

On July 26, 1999, required payment for all five central offices was remitted in order to begin the physical collocation completion interval, again asserting that the required interval under the Interconnection Agreement is 90 days, that remittance did not constitute acceptance of the 180 day interval, and that PNC had no intention of amending the Appendix Collocation - Missouri at this time.

I am extremely concerned that this matter has been handled by technical personnel at SWBT without the benefit of legal advice. The Agreement between our companies is clear in that it provides for 90-day maximum completion intervals for physical collocation; after that, liquidated damages apply. Further, I am deeply dismayed that SWBT would attempt to use the FCC's new rules for physical collocation to attempt to coerce PNC into signing a new collocation appendix that significantly dilutes PNC's rights in relation to the present appendix. It is a deplorable business tactic for SWBT personnel to assert that PNC has no rights at all because it has not signed a new "Cageless Collocation".

PNC is presently exploring its legal and regulatory alternatives on these matters as they relate to present state and federal statutes and regulations, the contractual obligations that exist between our companies and whether any other claims may exist. If this matter is to be resolved amicably, it must be resolved very quickly. My telephone number is 573-214-2113; it is my sincere hope that we can find some solution to the situation described herein. I look forward to hearing from you.

Yours truly,

A handwritten signature in black ink, appearing to read "Colleen M. Dale" followed by a stylized flourish or initials.

Colleen M. Dale
Senior Counsel

fax copy: Kathy Swaller, Southwestern Bell Telephone Company

Russ Stanley
Director-Competitive
Provider Account Team

SBC Telecommunications, Inc.
Four Bell Plaza, 7th Floor
Dallas, Texas 75202
Phone 214 484-4888
Fax 214 484-1486



July 27, 1999

Via Facsimile and Regular Mail

Mr. Richard S. Phillips
President, Primary Network Communications, Inc.
11756 Borman Drive
Suite 101
St. Louis, Missouri 63146-4133

Re: Applications for "cageless" collocation in St. Louis Area Central Offices

Dear Mr. Phillips:

I am in receipt of your letters of July 22 and 23, 1999, regarding cageless collocation delivery intervals in several St. Louis Area Central Offices. As we discussed on the telephone, your applications for cageless collocation in these offices are being handled as expeditiously as possible. Preparation for the specific arrangements requested by these applications require considerable time to complete and are not being delayed unnecessarily by Southwestern Bell ("SWBT"). For example, your power requirements in the Mehlville Central Office exceed the capacity of the current power plants. Delivery of the arrangements you've requested requires special engineering, cabling and additional equipment to meet your power needs. The additional work extends the delivery schedule.

In fact, Southwestern Bell in its latest Generic Collocation Appendix specifically notes that unique power needs may sometimes extend the completion date up to 180 days:

2.8 Unless otherwise mutually agreed to by the Parties in writing, where power does not exist or in Other Central Office Space, SWBT will complete construction of requests for caged, shared, or cageless collocation within 180 days from receipt of Collocator's acceptance of the quotation.

I understand that your Account Manager, Arpana Kagal, forwarded a copy of our Generic Collocation Appendix, which includes all of the necessary terms and conditions for cageless collocation, on July 12, 1999. You indicated in our telephone call that the "Intervening Law" clause, section 3.2 of the General Terms and Conditions of the Broadspan

Mr. Richard S. Phillips
July 27, 1999
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Communications Interconnection Agreement with Southwestern Bell, somehow selectively incorporates Southwestern Bell's cageless collocation offering into your existing interconnection agreement. The language you refer to states:

The parties recognize and agree that, in the event of any administrative, regulatory, legislative or judicial order, rule, opinion or other legal action which revises or modifies AT&T's or SWBT's rights and/or obligations pertaining to any matter contained in the AT&T interconnection agreement other than at the request of or with the consent of both AT&T and SWBT (subsequent development), the relevant provisions of this agreement shall be likewise revised or modified to be consistent with such subsequent development. To the extent necessary to implement such subsequent development, the parties will expend diligent efforts to implement such changes.

In mentioning "Intervening Law," you must be referring to the recent Federal Communications Commission (FCC) Order establishing, among other things, a CLEC's ability to collocate in an ILEC Central Office without a cage, wall, or other partition securing the CLEC's equipment. Not every CLEC wishes to go "cageless," however, and Southwestern Bell cannot assume anything until an agreement on the matter is negotiated and signed. More importantly, the FCC's Order does not compel cageless collocation unless the parties agree to reasonable terms and conditions implementing that type of collocation. Nothing is automatically implemented by virtue of that FCC Order.

It's Southwestern Bell's position that our companies must still amend our existing Interconnection Agreement to include the prices, terms and conditions that have been established for cageless collocation, and then file the Amendment for approval by the Missouri Public Service Commission. Our existing agreement requires the parties to work together diligently to implement any conforming amendments, and Southwestern Bell believes it has and will continue to do that. In the meantime, Southwestern Bell has offered cageless collocation through an Accessible Letter, which stated, among other things, that we would process applications even before an Amendment was in place.

Finally, your recent letters misstate how quickly collocation must occur, even if an executed Collocation Amendment was in place. While it is true that three months is the target collocation completion date specified in section 4.12 of your existing interconnection agreement, the very next sentence in the language you cited contemplates that Southwestern Bell may not be able to meet that target in all circumstances. That is why section 4.12 of the Collocation Appendix goes on to describe a number of other options, including agreeing to a different schedule, hiring your own contractor, or going to the Commission for relief.

Mr. Richard S. Phillips
July 27, 1999
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I hope this information has been helpful. Please continue to direct any questions or concerns about the negotiation of the Generic Collocation Appendix to Ms. Kagal at 214.464.7089. Of course, if you have any questions or need further information about your collocation applications in general, feel free to contact Ms. Justice, at 214.464.4778, or me at 214.464.4289.

Sincerely,

OR Stanley

August 2, 1999

VIA FACSIMILE and
FIRST CLASS MAIL

Ms. Colleen M. Dale
Senior Counsel
Primary Network Communications, Inc.
11756 Borman Drive, Suite 101
St. Louis, MO 63146-4133

Re: Collocation

Dear Ms. Dale:

I am writing in response to your July 26, 1999 letter and as a follow up to our telephone conversation on July 30, 1999. As we discussed, it is necessary for Southwestern Bell and Primary Network Communications, Inc. ("PNC") to amend the Interconnection Agreement to incorporate FCC 99-48. At the time Appendix Collocation was negotiated and/or arbitrated, caged collocation was the only form of physical collocation contemplated by the parties. There are several provisions of FCC 99-48 that are either inadequately addressed or not contemplated by Appendix Collocation.

Southwestern Bell forwarded to PNC Southwestern Bell's most current generic Collocation Agreement — which incorporates FCC 99-48 — for consideration. It is my understanding that PNC does not want to replace its current Appendix Collocation with the generic Collocation Agreement. Accordingly, the parties must negotiate the provisions of FCC 99-48 into Appendix Collocation. Southwestern Bell stands ready and willing to negotiate in good faith.

While I hope we have reached agreement on our path forward, I must respond to certain allegations in your letter. The five collocation applications you mentioned were all for cageless collocation. Inasmuch as Appendix Collocation does not contemplate cageless collocation, it cannot be said that the completion intervals quoted by Southwestern Bell violate the terms of the Interconnection Agreement. Furthermore, Southwestern Bell is not trying to use FCC 99-48 to coerce PNC into signing the generic Collocation Agreement. The Interconnection Agreement must be amended and Southwestern Bell merely offered the generic — which has been adopted by other CLECs — as a quick means of incorporating FCC 99-48. Again, Southwestern Bell is ready and willing to negotiate. To that end, PNC's Account Manager, Arpana Kagal, will make arrangements for the parties to commence negotiations.

Finally, please accept this letter as Southwestern Bell's response to Susan L. Butler's July 21, 1999 letter to Arpana Kagal. Southwestern Bell cannot agree to operate under the annotated version of Appendix Collocation attached to Ms. Butler's letter. Simply put, Appendix Collocation does not contain all the terms and conditions necessary to implement FCC 99-48.

Ms. Colleen M. Dale
August 2, 1999
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If you have any questions, please do not hesitate to call me.

Very truly yours,

cc: Arpana Kagal
Russ Stanley